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SUBJECT: ICC'S DECISION TO POSTPONE CONFIRMING CHARGES AGAINST
JEAN-PIERRE BEMBA NOT EXPECTED TO AFFECT VOLATILE SOCIAL CLIMATE

11. (SBU) Summary: The International Criminal Court's (ICC) Pre-Trial Chamber III decided March 4 to postpone its decision on whether to confirm charges against Jean-Pierre Bemba, stating that the facts of the case point to the criminal liability of Bemba as a military commander but not as an individual perpetrator, as currently charged. The Chamber has given the prosecutor until March 30 to submit amended charges. At a March 5 press conference, MLC Secretary-General Francois Muamba declared victory, asserting that the decision to postpone charges is a validation of the MLC's view that the case against Bemba is political and not based on Bemba's actions. This decision is not expected to impact significantly on social tensions in Kinshasa or elsewhere in the DRC; Bemba followers have yet to sustain meaningful demonstrations in support of their leader. We would welcome a report on the legal aspects of this case from Embassy The Hague. End Summary.

12. (U) The ICC's Pre-Trial Chamber III decided March 4 to postpone its decision on whether to confirm charges against Senator Jean-Pierre Bemba, the National Assembly's official opposition leader. Chamber III declared that the evidence presented by the Prosecutor may amount to a different type of criminal responsibility than that with which Bemba is currently charged. Instead of individual criminal responsibility, which is addressed in article 25 of the Rome Statute, the Chamber stated, it would appear that the facts of the case point to Bemba's criminal liability as a military commander or superior officer, which is covered in article 28.

13. (U) Senator Jean-Pierre Bemba is the President of the Mouvement de Liberation du Congo (MLC) and heads the main opposition party in the National Assembly. Belgian authorities arrested Bemba May 24, 2008 following the unsealing of an ICC arrest warrant and handed him over to the ICC shortly afterwards. The ICC Prosecutor has charged Bemba with five counts of war crimes and three counts of crimes against humanity for events that took place in the Central African Republic from October 25, 2002 to March 15, 2003.

14. (U) The Pre-Trial Chamber has given the Prosecutor until March 30 to submit documents amending the charges. Legal representatives for the victims have until April 9 to submit their responses. Bemba's defense team has until April 24 to submit its response to the amended charges. The Chamber decided that the 60-day period for the issuance of its decision on the confirmation of charges will begin from the date of the last written submission.

15. (U) At a March 5 press conference, MLC Secretary-General Senator Francois Mwamba expressed joy on the part of the MLC and Bemba's family. He asserted that the court's decision essentially means there was not enough evidence to charge Bemba with individual criminal liability. Even though Bemba may be eventually charged with the criminal liability of a military commander, Mwamba stated, he will be acquitted of all charges in the end. Mwamba's spin, unsurprisingly, is that the ICC's latest action validates the MLC's

view that the charges surrounding Bemba are politically motivated, not based on criminal actions Bemba is alleged to have committed.

¶6. (SBU) Comment: With social tensions at their highest level since the installation of democratic government in the DRC less than three years ago, observers are monitoring the Bemba affair closely. The procedural postponement of the charges is not expected to impact the volatile social climate in Kinshasa or, for that matter, in other parts of the country. In the current social climate, resulting primarily from the economic crisis, a decision to actually try Bemba, however, could be the spark that sets off riots. Bemba, who is not particularly popular in the Kinshasa area, is, nonetheless, an opponent of President Kabila and Kabila is much more disliked here than Bemba. On the other hand, a decision to try Bemba might not receive much attention; MLC efforts last summer to sustain pro-Bemba demonstrations after his arrest were unsuccessful.

¶7. (SBU) Comment (continued): Regarding the ICC's case against Bemba, it would appear that the Pre-Trial Chamber wants to avoid repeating its mistakes in charging another Congolese defendant, Thomas Lubanga. In the Lubanga case the court modified the charges against the defendant after the trial had begun, rather than before as it done in the Bemba case. Finally, we are not certain what the Chamber's action actually means in terms of a final decision to confirm (or drop) charges against Bemba and would welcome any insights Embassy The Hague would care to provide. End Comment.

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